the stock sold it to the plaintiff, and a transfer was then sent to the company of "10,000*l.* of 5 per cent. preference stock No. 1," and across the certificate was written by the secretary, by authority of the directors, "coupons for 10,000*l.* preference stock, forwarded to the companies by (the vendor) are held by me to meet this transfer." The representation was meant to apply to the stock of 15,000*l.* issued to the Cambrian Company. The misrepresentation to sustain the bill must be wilful and fraudulent; this was not the case here, nor had the plaintiff shown that he had relied upon and been deceived by the misrepresentation. The certificate did not say that the stock transferred was part of the 85,000*l.* stock, nor did the plaintiff allege that he so believed, he merely alleged that he believed that he was getting genuine No. 1 stock; but he might have believed that the stock was part of the 15,000*l.* issued, and yet that it was genuiue No. 1 preference stock, that is, that it ranked equal to the 85,000*l.* issued. Then he had delayed filing his bill from 1869, when he was informed of the probability that his stock was not genuine No. 1 stock, till 1874; that alone would be decisive against him.

BAGGALLAY, J. A., and BRAMWELL, J. A., concurred.

Appeal allowed and bill dismissed with costs.

Court of Appeal in Chancery.

MASTER *v.* HANSARD.[1]

Where a personal covenant is made by a tenant not to build without the landlord's approval, a subsequent lessee of the same landlord of an adjoining plot cannot compel the landlord to enforce for his benefit the covenant with the first tenant.

THE owner of two adjoining plots of land leased one for a term to A., and subsequently the other for a term to B. A. and B. at the time of their respective leases, covenanted respectively that they would not during the term do on the demised premises anything which would be an annoyance to the lessor and his tenants, or build on the ground demised, without first submitting the plans to the lessor, and obtaining his approval. Within twenty years A., with the approval of the lessor, began to build upon his ground, so as to darken B.'s windows. B. filed a bill to restrain A. from erecting, and the lessor from approving the building objected to.

[1] 4 Chan. Div. 718–724.

BACON, V. C., held that the plaintiff could not claim to have the restrictive covenant made by A. with the common landlord enforced by the latter, in her, B's., favor, but directed an inquiry as to damages, whereupon A. appealed. For B. it was argued, that if the common landlord had remained the owner and in possession of the property leased to A., he could not have built so as to darken B.'s, the plaintiff's, windows, for that would have been in derogation of his grant. If the grantor had such an interest in the adjoining property that he could have protected the easements which could have been enjoyed, if the adjoining property belonged absolutely to him, he was bound to protect them. [BRAMWELL, J. A.—Suppose the grant to A. had been in fee, would the covenant have run with the land?] It would. *Swansborough* v. *Coventry*, 9 Bing. 305; *Booth* v. *Alcock*, Law Rep. 8 Ch. 663; *Eastwood* v. *Lever*, 4 D. J. & S. 114; *Western* v. *MacDermott*, Law Rep. 2 Ch. 72; *Keates* v. *Lyon*, Law Rep. 4 Ch. 218; *Child* v. *Douglas*, Kay 560, were referred to.

BRAMWELL, J. A., was of the opinion that the appeal must be allowed. The doctrine as to the disposition by the owner of two tenements, did not apply. The grantor at the time of the grant to the plaintiff was not the owner of the land on which A. had built, in the sense of being able to make a grant of an easement over it, and there was therefore no reason why the law should imply a grant of it. Suppose the first grantees had covenanted to erect no buildings, and then trespassers had come in and built; could the plaintiff have called on the landlord to turn them out? So if the lessees had erected buildings, the plaintiff, in the absence of any covenant by her landlord to that effect, could not have called upon the landlord to enforce against the lessees their covenant not to build.

It would have been monstrous to hold that the covenant, the existence of which was not even communicated to the plaintiff, when her lease was taken, could be construed as enuring to her benefit.

JAMES, L. J., and BAGGALLAY, J. A., concurred.

Bill dismissed.